

Amendments to Senate Bill No. 251
1st Reading Copy

Requested by Senator Edward Buttrey

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Pat Murdo
February 18, 2015 (10:36am)

1. Title, page 1, line 7.

Following: "17-5-1527,"**Insert:** "18-2-103, 18-2-111, 18-2-201, 18-2-301, 18-2-302,"**Following:** "18-2-403,"**Insert:** "18-2-421,"

2. Page 4.

Following: line 13**Insert:** "Section 3. Section 18-2-103, MCA, is amended to read:**"18-2-103. Supervision of construction of buildings. (1)**

For the construction of a building costing more than \$150,000, the department shall:

(a) review and accept all plans, specifications, and cost estimates prepared by architects or consulting engineers;

(b) approve all bond issues or other financial arrangements and supervise and approve the expenditure of all money;

(c) solicit, accept, and reject bids and, except as provided in Title 18, chapter 2, part 5, award all contracts to the lowest qualified bidder considering conformity with specifications and terms and reasonableness of the bid amount;

(d) review and approve all change orders; and

(e) accept the building when completed according to accepted plans and specifications.

(2) The department may delegate on a project-by-project basis any powers and duties under subsection (1) to other state agencies, including units of the Montana university system, upon terms and conditions specified by the department.

(3) Before a contract under subsection (1) is awarded, two formal bids must have been received, if reasonably available.

(4) The department need not require the provisions of Montana law relating to advertising, bidding, or supervision when proposed construction costs are \$75,000 or equal to or less than the amount required for a public works contract as defined in 18-2-401. However, with respect to a project having a proposed cost of \$75,000 equal to or less but more than \$25,000 than the amount required for a public works contract as defined in 18-2-401, the agency awarding the contract shall procure at least three informal bids from contractors registered in Montana, if reasonably available.

(5) For the construction of buildings owned or to be owned by a school district, the department shall, upon request, provide inspection to ensure compliance with the plans and specifications for the construction of the buildings. "Construction" includes construction, repair, alteration, equipping, and furnishing during construction, repair, or alteration. These services must be provided at a cost to be contracted for between the department and the school district, with the receipts to be deposited in the department's construction regulation account in a state special revenue fund.

(6) It is the intent of the legislature that student housing and other facilities constructed under the authority of the regents of the university system are subject to the provisions of subsections (1) through (3).

(7) The department of military affairs may act as the contracting agency for buildings constructed under the authority of 18-2-102(2)(d). However, the department of administration may agree to act as the contracting agency on behalf of the department of military affairs. Montana law applies to any controversy involving a contract."

{ Internal References to 18-2-103:

20-15-403 x 20-25-309x 20-25-442x }

Insert: "Section 4. Section 18-2-111, MCA, is amended to read:

"18-2-111. Policy regarding practice of architecture -- preparation of working drawings by department limited. (1) It is the policy of the state not to engage in the practice of architecture. However, this policy may not be construed as prohibiting the department of administration from:

- (a) engaging in preplanning functions necessary to prepare a building program for presentation to the legislature;
- (b) supervising construction as provided in 18-2-105(7); or
- (c) preparing working drawings for minor projects.

(2) The department of administration may not prepare working drawings for the construction of a building, with the exception of repair or maintenance projects, when the total cost of the construction will exceed ~~\$75,000~~ the cost of a public works contract as defined in 18-2-401."

{ Internal References to 18-2-111:

18-8-211x }

Insert: "Section 5. Section 18-2-201, MCA, is amended to read:

"18-2-201. Security requirements. (1) (a) Except as otherwise provided in 85-1-219 and subsections (3) through (5) of this section, whenever any board, council, commission, trustees, or body acting for the state or any county, municipality, or public body contracts with a person or corporation to do work for the state, county, or municipality or other public body, city, town, or district, the board, council, commission, trustees, or body shall require the person or corporation with whom the contract is made to make, execute, and deliver to the board,

council, commission, trustees, or body a good and sufficient bond with a surety company, licensed in this state, as surety, conditioned that the person or corporation shall:

(i) faithfully perform all of the provisions of the contract;

(ii) pay all laborers, mechanics, subcontractors, and material suppliers; and

(iii) pay all persons who supply the person, corporation, or subcontractors with provisions, provender, material, or supplies for performing the work.

(b) The state or other governmental entity listed in subsection (1)(a) may not require that any bond required by subsection (1)(a) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity listed in subsection (1)(a) may, in lieu of a surety bond, permit the deposit with the contracting governmental entity or agency of the following securities in an amount at least equal to the contract sum to guarantee the faithful performance of the contract and the payment of all laborers, suppliers, material suppliers, mechanics, and subcontractors:

(a) lawful money of the United States; or

(b) a cashier's check, certified check, bank money order, certificate of deposit, money market certificate, bank draft, or irrevocable letter of credit, drawn or issued by:

(i) any federally or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation; or

(ii) a credit union insured by the national credit union share insurance fund.

(3) Any board, council, commission, trustee, or body acting for any county, municipality, or public body other than the state may, subject to the provisions of subsection (1)(b), in lieu of a bond from a licensed surety company, accept good and sufficient bond with two or more sureties acceptable to the governmental entity.

(4) Except as provided in subsection (5), the state or other governmental entity may waive the requirements contained in subsections (1) through (3) for projects related to building or construction projects, as defined in 18-2-101, that cost less than ~~\$50,000~~ projects encompassed in the definition of a public works contracts as defined contract in 18-2-401.

(5) A school district may waive the requirements contained in subsections (1) through (3) for projects related to building or construction projects, as defined in 18-2-101, that cost less than ~~\$7,500~~ projects encompassed in the definition of a public works contract in 18-2-401."

{ Internal References to 18-2-201:

18-2-202

18-2-202

18-2-203

18-2-204 }"

Insert: "Section 6. Section 18-2-301, MCA, is amended to read:

"18-2-301. Bids required -- advertising. (1) It is unlawful for any offices, departments, institutions, or any agent of the state of Montana acting for or ~~in~~ on behalf of the state to do, to cause to be done, or to let any contract for the construction of buildings or the alteration and improvement of buildings and adjacent grounds on behalf of and for the benefit of the state when the amount involved is ~~\$75,000 or more~~ within the definition of a public works contract in 18-2-401 without first advertising in at least one issue each week for 3 consecutive weeks in two newspapers published in the state, one of which must be published at the seat of government and the other in the county where the work is to be performed, calling for sealed bids to perform the work and stating the time and place bids will be considered.

(2) All work may be done, caused to be done, or contracted for only after competitive bidding.

(3) If responsible bids are not received after two attempts, the department or agency may contract for the work in a manner determined to be cost-effective for the state.

(4) This section does not apply to work done by inmates at an institution in the department of corrections.

(5) (a) The provisions of Montana law governing advertising and competitive bidding do not apply when the department of fish, wildlife, and parks is preserving or restoring the historic buildings and resources that it owns at Bannack if:

(i) the options listed in subsection (5)(b) are determined to be more cost-effective for the state; and

(ii) the implementation of the options listed in subsection (5)(b) is necessary to save historic buildings and resources from degradation and loss.

(b) For the preservation or restoration of historic buildings and resources at Bannack when the conditions listed in subsection (5)(a) are met, the department of fish, wildlife, and parks may accomplish the preservation or restoration through:

(i) a memorandum of understanding with a local, state, or federal entity or nonprofit organization when the entity or organization demonstrates the competence, knowledge, and qualifications to preserve or restore historic resources;

(ii) the use of qualified and trained department of fish, wildlife, and parks employees and volunteers;

(iii) a training program in historic preservation and restoration conducted by a qualified local, state, or federal entity or a qualified nonprofit organization; or

(iv) any combination of the options described in subsection (5)(b)."

{Internal References to 18-2-301:

18-2-315 x 18-2-501 x}"

Insert: "Section 7. Section 18-2-302, MCA, is amended to read:

"18-2-302. Bid security -- waiver -- authority to submit.

(1) (a) Except as provided in subsection (2), each bid must be accompanied by bid security in the amount of 10% of the bid. The

security may consist of cash, a cashier's check, a certified check, a bank money order, a certificate of deposit, a money market certificate, or a bank draft. The security must be:

(i) drawn and issued by a federally chartered or state-chartered bank or savings and loan association that is insured by or for which insurance is administered by the federal deposit insurance corporation;

(ii) drawn and issued by a credit union insured by the national credit union share insurance fund; or

(iii) a bid bond or bonds executed by a surety company authorized to do business in the state of Montana.

(b) The state or other governmental entity may not require that a bid bond or bond provided for in subsection (1)(a)(iii) be furnished by a particular surety company or by a particular insurance producer for a surety company.

(2) The state or other governmental entity may waive the requirements for bid security on projects related to building or construction projects, as defined in 18-2-101, that cost less than ~~\$25,000~~ projects encompassed in the definition of a public works contract in 18-2-401.

(3) The bid security must be signed by an individual authorized to submit the security by the corporation or other business entity on whose behalf the security is submitted. If the request for bid or other specifications provided by the state or other governmental entity specify the form or content of the bid security, the security submitted must comply with the requirements of that specification."

{ Internal References to 18-2-302:

18-2-303 18-2-315 }"

Renumber: subsequent sections

3. Page 7.

Following: line 29

Insert: "Section 10. Section 18-2-421, MCA, is amended to read:

"18-2-421. **Notice.** When a public works project is accepted by the public contracting agency, a notice of acceptance and the completion date of the project must be sent to the department. ~~However, in the case of public works contracts that amount to \$50,000 or less in cost, The department may request the notice of acceptance and the completion date of the a project is not required unless the department requests that information that does not meet the definition of a public works project in 18-2-401.~~ The 90-day limitation for filing an action in district court, as provided in 18-2-407, does not begin until the public contracting agency notifies the department of its acceptance of the public works project."

{ Internal References to 18-2-421: None. }

Renumber: subsequent sections

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